

REMARKS

Claims 1-4, 6, 8-12, 14-16, and 18-30 are pending in the present application. In view of the above amendments and following remarks, Applicant respectfully requests reconsideration of the rejections and allowance of the Application.

Examiner Interview Summary

The undersigned representative engaged in a telephonic interview with Examiner Flynn and SPE John Hayes on February 11, 2009. The Applicant and his representative extend their sincere thanks to the Examiner and SPE for their time during the aforementioned interview. The Applicant and his representative appreciate the guidance offered by the Examiner and SPE with respect to the present Application.

During the course of the February 11th interview, the discussion was focused on the cited portion of *Kerr* that teaches inventory rates rather than inventory categories as claimed in the present Application. The SPE indicated agreement as to the distinction and suggested some possible claim amendments to clarify the distinction in the present Response.

Rejections Under 35 USC § 101

In the *Office Action*, the Examiner rejected claims 1-4, 6, and 21-29 under 35 USC §101 for being directed to non-statutory subject matter. Specifically, the Examiner notes that “[f]unctional descriptive material such as a computer program must be structurally and functionally interrelated with a medium to allow its intended uses to be realized.” *Office Action*, 3.

In response, Applicant has amended independent claims 1 and 21 to embody the components of these claims on a computer readable storage medium. Support for a computer readable storage medium can be found in at least claims 15 and 20 as originally filed. When functional descriptive material is recorded on some computer-

readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). As such, claims 1-4, 6, and 21-29 are now directed to statutory subject matter.

The Examiner also rejected claims 8-12, 14, 16, 18-19, and 30 for being directed to non-statutory subject matter. Specifically, the Examiner asserts that these claims "identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are direct to non-statutory subject matter." *Office Action*, 3-4.

In response, Applicant has amended independent claims 8 and 16 to direct the claims to computer implemented methods. Specifically, each step of claim 8 and 16 is performed using a computing device. As such, independent claims 8 and 16 and dependent claims 9-12, 14, 18-19, and 30 now are "tied to another statutory class (such as a particular apparatus)" *Diamond v. Diehr*, 450 U.S. 175, 184 (1981).

Rejections Under 35 USC § 103(a)

In the *Office Action*, the Examiner states that claims 1-4, 6, 8-10, 14-16, 18-26, and 28-39 are rejected under 35 USC § 103(a) as being unpatentable over Ker et al. (U.S. Patent No. 5,404,291) [hereinafter "*Kerr*"], in view of Walker et al. (U.S. Patent No. 6,085,169) [hereinafter "*Walker*"], and further in view of Norrid (U.S. Pub. No. 2003/0061145) [hereinafter "*Norrid*"]. *Office Action*, 4. Applicant respectfully traverses, at least, in light of the following remarks.

Independent claim 1 recites in part "storing maximum inventory allotments corresponding to inventory categories for each tier, whereby a total of the maximum inventory allotments for all tiers in a single inventory category is greater than a total

inventory available for the single inventory category.” Referring to FIG. 7e and using hotel rooms as the inventory and suites (i.e., hotel room categories) as the inventory category as recited in claim 2, this claim limitation will be illustrated as follows below.

As shown in FIG. 7e, there are five tiers (i.e., agent tier A, agent tier B, other tier A, other tier B, and guest tier). A maximum inventory allotment for the suite inventory category for each tier is stored (i.e., agent tier A=40; agent tier B= 30; other tier A=50; other tier B=60, and guest tier=80). With respect to the suite inventory category, the “total inventory available for the single inventory category” is 100 suites. This represents the total suites that exist at the particular hotel. However, the sum of “a total of the maximum inventory allotments for all tiers” in the suite inventory category is more than 100 suites (i.e., $40+30+50+60+80=260$).

As a result, the total of the allotments across all the tiers is greater the actual inventory available for each inventory category. By using this system, embodiments of the “present invention minimizes loss of opportunity of sale since more rooms can be allotted to each tier, consequently creating more availability for each user. *Published Application [0076]*. However, “[o]verbooking will be prevented in the present invention by the allotment engine monitoring the room availability” as recite in claim 1. *Published Application [0077]*.

The Examiner contends *Kerr* teaches the limitation “whereby a total of the maximum inventory allotments for all tiers in a single inventory category is greater than a total inventory available for the single inventory category” citing col. 4, lines 6-15 of *Kerr* for support. *Office Action*, 4. However, a closer reading of this section indicates that *Kerr* is directed to rate categories not inventory categories (e.g., room types). Specifically, “the sum of all room-types available for sale in a given rate-category may exceed the maximum allowed for the rate-category. The practical explanation is that many room-types may be sold in the same rate-categories.” *Kerr*, col. 4, lines 6-10. Clearly, *Kerr* is directed to rate categories which are not equivalent to room or

inventory categories, at least, because different room or inventory categories may be embodied within each rate category.

Furthermore, *Kerr* states that “[t]he advantage of the invention is that the reservations-manager does not need to make a specific, rigid allocation of rooms by physical room-type to a rate-category.” *Kerr*, col. 4, lines 11-14. This statement clearly teaches away from the claim limitation of storing (i.e., allocating) maximum inventory allotments for each inventory category (e.g., physical room-type) to each tier as recited in claim 1.

Based at least on the remarks provided above, independent claim 1 is patentable over *Kerr*. Additionally, neither *Walker* nor *Norrid* cures the deficiencies of *Kerr*. Therefore, claim 1 is nonobvious over the combination of references.

Independent claims 8, 15, 16, 20, and 21 contain similar limitations as those of claim 1. As such, claims 8, 15, 16, 20, and 21 are patentable over the combination of *Kerr*, *Walker*, and *Norrid*.

Applicant respectfully disagrees with the Examiner’s rejection of claims 2-4, 6, 9-10, 14, 18-19, 22-26, and 28-30, in that claims 2-4, 6, 9-10, 14, 18-19, 22-26, and 28-30 depend from otherwise allowable claims as discussed in detail herein. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” 35 U.S.C. § 112 ¶ 4. As such, Applicant contends that dependent claims 2-4, 6, 9-10, 14, 18-19, 22-26, and 28-30 are allowable for at least the same reasons as the independent claim from which they depend.

The Examiner reject claims 11, 12, and 27 as being unpatentable over *Kerr*, *Walker*, and *Norrid* in view of further references. Applicants traverse in that a dependent claim incorporates by reference all the limitations of the claim from which it depends (see 35 U.S.C. § 112 ¶ 4). As the further references do not cure the deficiencies of *Kerr*, *Walker*, and *Norrid* with respect to the independent claims, the rejections of claims 11, 12, and 27

under 35 U.S.C. § 103 are overcome for at least the same reasons for the claims from which they depend.

CONCLUSION

Based on the above remarks, Applicant believes that the rejections in the *Office Action* of November 25, 2008 are fully overcome, and that the Application is in condition for allowance. If the Examiner has questions regarding the case, the Examiner is invited to contact Applicant's undersigned representative at the number given below.

Respectfully submitted,
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